

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:) 19-MD-2875(RBK-JS)
)
) Camden, NJ
VALSARTAN NDMA PRODUCTS) February 13, 2020
LIABILITY LITIGATION) 4:03 p.m.

TRANSCRIPT OF TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

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I N D E X

	<u>COLLOQUY RE:</u>	<u>PAGE</u>
1		
2		
3		
4	Confidentiality designation	5
5	Decision by the Court	5
6	Service on foreign defendants	5
7	Decision by the Court	6
8	Downstream discovery	7
9	Decision by the Court	9
10	Short form complaint	10
11	Decision by the Court	11
12	Over-identification	11
13	Decision by the Court	12
14	Improvvidently filed complaint	12
15	Decision by the Court	14
16	Plaintiff's fact sheet	15
17	Decision by the Court	15
18	Direct filing order	16
19	Decision by the Court	17
20	Master economic complaint	17
21	Decision by the Court	17
22	Third-party consultants	18
23	Decision by the Court	19
24		
25		

Colloquy

4

1 (The following was heard via telephone conference
2 at 4:03 p.m.)

3 THE COURT: This is Judge Schneider, can -- can you
4 hear me?

5 MR. SLATER: Yes, sir.

6 MR. GOLDBERG: Yes.

7 THE COURT: Oh, great. Is Mr. Slater on the line?

8 MR. SLATER: Yes, I am, Judge.

9 THE COURT: How about Mr. Goldberg?

10 MR. GOLDBERG: Yes, Your Honor.

11 THE COURT: Okay. Dave -- Dave Brewer (phonetic),
12 are you on the line?

13 (No response)

14 THE CLERK: Judge Schneider, this is Larry
15 MacStravic. I'm in your courtroom.

16 THE COURT: Okay. Are we on the record, Larry?

17 THE CLERK: We are recording, yes, sir.

18 THE COURT: Okay, great. I understand there's about
19 20-some odd people on the phone. Why don't we get started and
20 whoever is going to talk, just say your name so when the
21 transcript is transcribed we know who's talking. Okay?

22 I have the letters from Mr. Slater and Mr. Goldberg.
23 Why don't we just go down the issues in the letter.

24 There's two quick points I want to take out of order
25 and just get them out of the way.

1 The first issue has to do with the confidentiality
2 designation. I heard from at least one party, maybe more,
3 that they want more time to meet and confer about this issue,
4 and I informed counsel, hopefully you got a copy of my email,
5 that I received Mr. Tressler's letter and it just doesn't cut
6 it to get a letter to say that documents should be
7 confidential. The designation has to be supported by an
8 affidavit by someone with firsthand knowledge.

9 I know we have a time for a response brief from
10 plaintiff, but it seems to me we ought to set new deadlines to
11 give the defendants time to submit the required affidavit and
12 to give the parties time to meet and confer if they're going
13 to try and work this out.

14 So my inclination is to give the defendants three
15 weeks to meet and confer and if they can't work this out,
16 submit supporting affidavits and give plaintiffs two weeks
17 after that to brief the issue and then we'll just get it
18 decided.

19 Any objection?

20 MR. SLATER: No objection from plaintiff.

21 MR. GOLDBERG: No, Your Honor, no objection from
22 defendant.

23 THE COURT: Okay. I'll enter that order.

24 The second issue has to do with the service on the
25 foreign defendants. I thought that all foreign defendants had

Colloquy

6

1 been served now, but, Mr. Slater, from your letter, is there
2 one foreign defendant that hasn't entered an appearance?

3 MR. SLATER: Right. It's the -- I believe it's the
4 Aurobindo defendant, Aurobindo Pharma, and we -- we don't have
5 confirmation, but based on the timing, we believe that it
6 would have been appropriate to default them at this point.
7 And I believe the defendants agree, they couldn't confirm
8 either including Aurobindo's U.S. entities.

9 THE COURT: I'm going to enter an order when I get
10 back to the office on Monday, I'm going to give Aurobindo
11 until the date we have the conference to enter an appearance.
12 If they don't enter an appearance by then, plaintiff has leave
13 to file for default. And I think according to the rules, Mr.
14 Slater, you have to -- if you want to file for a default
15 judgment, you have to file a motion for that. I don't think
16 we can skip that step.

17 MR. SLATER: No problem. Understood.

18 THE COURT: So Aurobindo, I don't know if their
19 counsel's on the phone, from U.S., but they've had enough time
20 and this is their last chance. If they don't enter their
21 appearance by the date of the conference at the end of the
22 month, then plaintiffs have leave to file a default. We hope
23 that doesn't happen, but, you know, they've been given enough
24 chances.

25 Okay. The issue -- the first issue in Mr.

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7

1 Goldberg's letter was the downstream discovery. It sounds
2 like the parties are meeting and conferring on this issue and
3 by the end of the month we'll know what the disputes are. Is
4 that right?

5 MS. WHITELEY: That's correct, Your Honor. This is
6 Conlee Whiteley on behalf of plaintiff.

7 THE COURT: Okay. That's fine. No problem.

8 MS. RICHER: Your Honor --

9 UNIDENTIFIED COUNSEL: Your Honor --

10 MS. RICHER: Your Honor, this is --

11 THE COURT: Yes.

12 MS. RICHER: -- this is Kristen Richer on behalf of
13 the retailers. Just to add to that, I do think that's right.
14 As the -- as both letters noted, we are -- both we and the
15 wholesalers are in the process of working on red lines to send
16 plaintiff that reflect our conversations.

17 We do think that as that process continues to
18 develop, there will be some global issues that are ripe for
19 the Court's consideration. But what we would propose perhaps,
20 though, is a process more similar to what happened with the
21 manufacturing defendants in that after the parties have had an
22 opportunity in the next week or so to confer about the red
23 lines exchanged, to agree on a briefing schedule where we
24 could key those issues up for the Court in a more organized
25 fashion than to wait and presenting them at the last minute in

1 a letter brief to the Court, so that -- so that the Court has
2 the benefit of the most current red line at that point and
3 also the parties considered views and responses to one another
4 on those issues.

5 I do think that looking at the timing of the next
6 conference that that process would be a bit rushed, and that a
7 slightly longer process would benefit both the parties and the
8 Court in keying these things up in a way that's organized and
9 helpful for all involved and that sufficiently narrows the
10 issue.

11 So we would propose that to the Court and perhaps
12 our suggestion would be that we -- we confer with plaintiff on
13 those issues as we confer about the red lines next week, and
14 that we come to the next conference with a schedule for -- for
15 presenting those issues to the Court, rather than the hurried
16 process of getting those into a letter brief in a jam for the
17 next conference.

18 MS. WHITELEY: Your Honor, this is Conlee Whiteley.
19 This was not raised during our meet and confer, but I would
20 just remind the Court that this was brought up in December and
21 we decided against that approach, and the plaintiffs remain
22 willing to work on this as diligently as possible and have the
23 Court narrow the issues at the end of the month.

24 MS. RICHER: I do think that that was discussed in
25 -- this is Kristen again, Kristen Richer. I do think that was

Colloquy

9

1 discussed in December. I think, you know, what the last few
2 weeks and it's our position generally is that this is -- these
3 are very, very complicated issues, that there are a number of
4 parties involved, and I do think that we've made progress, but
5 I -- I don't think that the next week or so is going to result
6 in us having these issues sufficiently keyed up for the Court.
7 We think that everyone would benefit here from a more measured
8 process to allow the parties to continue to meet and confer.

9 THE COURT: Why don't we do this, counsel, and --
10 and this will be a middle ground, why don't you at least agree
11 in time for the last conference, the conference at the end of
12 the month, to at least identify what their "macro" issues are.
13 Don't brief them, just identify them. We'll discuss them at
14 the conference. But if people want to brief them and they
15 want more time, they'll get more time. But maybe if we at
16 least know what the issues are, we can make some progress.

17 MS. WHITELEY: Yes, Your Honor.

18 THE COURT: Okay, counsel?

19 MS. WHITELEY: Yes.

20 MS. RICHER: Yes, Your Honor, that will be fine.

21 THE COURT: Okay. So let's just say for the non-
22 manufacturing defendants, the "macro" issues will be
23 identified in the status letter or a separate letter in time
24 to discuss, but not necessarily decide at the conference at
25 the end of the month. Okay?

Colloquy

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1 MS. WHITELEY: Okay. Thank you, Your Honor.

2 MS. RICHER: Thank you.

3 THE COURT: Next issue on the agenda was the short
4 form complaint issue. Mr. Slater, what can we do to wake
5 these people up?

6 MR. SLATER: Well, the first thing would be if the
7 defense would actually -- unless we missed something, and I
8 emailed my whole group, but let us know that they have this
9 issue and then give us notice of it and tell us who's doing it
10 so we can reach out to those folks individually, that would be
11 a great starting point. Because then we can look at the short
12 form complaints that they're talking about here. We can see
13 if we agree. We can try to work through it with our group.
14 The first notice that I had of this issue was when I received
15 Mr. Goldberg's letter.

16 THE COURT: I thought they did identify the
17 complaint at issue as an exhibit to their letter.

18 MR. SLATER: What I'm saying is, they may have done
19 it in a letter, it's just that we had no notice of this issue
20 before last night. So I think the best way to proceed with
21 this is if there's an issue like this, if the defense would
22 bring it to us and we can then talk with the plaintiffs on the
23 issue and look at the complaints and try to intercede and work
24 through it to avoid having to go to the Court with it, if
25 possible. If there's a disputed area, I would think we could

1 at least try to narrow it or eliminate the dispute.

2 THE COURT: Okay. Why don't you do this. Between
3 now -- now that you have the list, Mr. Slater, can someone in
4 your group just shake the tree and get these people to do what
5 they're supposed to do. The last thing in the world we want
6 to do is to issue an order to show cause for some
7 administrative issue. So if it's not done by the end of the
8 month, our hands are tied and we're going to have to do it.
9 Okay?

10 MR. SLATER: We have very good tree shakers. We'll
11 assign them.

12 THE COURT: Next issue, this is a real issue, this
13 issue of over-identification. You know, I haven't researched
14 the issue, but I -- I believe that the Court and the short
15 form complaint are subject to Rule 11. And if people are just
16 checking boxes willy-nilly, that's not kosher. And, you know,
17 from day one we've said in the case we're going to hold
18 defendant's feet to the fire and we're gonna do the same for
19 the plaintiff.

20 So if plaintiffs think -- not you, obviously, not
21 probably anyone on this call, thinks that they can just check
22 every box and get away with it, I think that's unacceptable.
23 Defendants have a right to know if they're in the case or not
24 and I don't think it's asking too much of the plaintiff if
25 they file a claim and set course (phonetic) that they'll have

1 to do a little bit of due diligence and find out from their
2 clients who they got their drug from.

3 So I'm not going to --

4 MR. SLATER: Judge, we don't disagree -- we don't
5 disagree, Judge. I thought that was the same issue we just
6 talked about with the short form complaints that we were to
7 get to these people.

8 THE COURT: Okay. Why don't we address it at the
9 end of the month. But I would get the message to these "over-
10 identification" people, the Court's going to hold their feet
11 to the fire; they just can't check the boxes. They gotta do
12 due diligence and do a reasonable investigation, and no one
13 wants to go around Rule 11 and get involved with Rule 11. So
14 hopefully they can file an amended complaint and just name the
15 parties who are appropriate and belong in their client's case.
16 Okay?

17 MR. NIGH: Your Honor --

18 MR. SLATER: Understood.

19 MR. NIGH: Your Honor, this is Daniel Nigh. I was
20 -- I was hoping that we could follow a procedure like we did
21 in Benicar where we labeled these kinds of cases improvidently
22 filed cases and they would show up on the docket a few months,
23 you know, and then at that second work agenda for hearing,
24 then they would be answered in orders to show cause and they
25 would have to, you know, put in why they still have this

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13

1 improvidently filed case --

2 THE COURT: Right. Right.

3 MR. NIGH: -- at the third hearing. And that --
4 that seemed to work well because it gave us time, you know, to
5 work out these issues with plaintiff's counsel.

6 I just -- one thing I noticed was, even a lot of our
7 cases was on there for failing to file short form complaints.
8 We just got notice of it last night and I found out that
9 that's a medical monitoring plaintiff's case, which was not
10 subject to PML-13 to file a short form complaint. So I think
11 we could have worked that out with defendants and, you know,
12 we should be able to work out issues like that with
13 defendants, this should never come to the Court.

14 THE COURT: Okay. Well, that's a good idea, Mr.
15 Nigh. We'll start the process at the end of the month. We'll
16 find out -- Mr. Goldberg's group will update the FG list and
17 we'll start issuing orders to show causes.

18 MR. SLATER: And, Your Honor, if I can also request
19 that when they list their name of the case, if they could also
20 list the name of the law firm. That helps in terms of -- you
21 know, centralizing when people look at this agenda, you know,
22 they can see their law firm name and they can process
23 (inaudible).

24 THE COURT: Yes. I don't think that's a big burden,
25 so I think if the defendant could do that, that would be

Colloquy

14

1 helpful.

2 MR. RUBENSTEIN: Your Honor --

3 THE COURT: Okay.

4 MR. RUBENSTEIN: -- this is Brian Rubenstein. Your
5 Honor, sorry, just before we leave this issue, this is Brian
6 Rubenstein on behalf of the defendants from Greenberg Traurig.

7 I think we're conflating two separate issues here.
8 There's -- there's the one issue for the short form complaints
9 that are, well, I guess we're calling improvidently filed, and
10 that's where they're either not filed with MDL centrality or
11 served incorrectly through MDL centrality, or they've been
12 untimely filed. And that's -- that's a batch of the cases.
13 Right now I think there's about eight of them.

14 But then there's a separate issue where the
15 plaintiffs are just checking all the boxes, whether they're
16 checking all the boxes for all groups of defendants or, you
17 know, all the manufacturers or everything above the retailers.
18 But these are two separate issues, you know, and it seems like
19 they're getting combined into one.

20 THE COURT: No, I -- I think you're right, counsel.
21 This is what I'm going to do, okay? I think you're right
22 about the "improvidently" filed complaint. We're talking
23 about the check boxes and Rule 11 issue.

24 To the extent that issue is not worked out by the
25 end of the conference, I'm going to order counsel to be

1 present in person to explain their complaint and then we'll
2 get to the bottom of it. The odds are pretty good by the time
3 they have to appear in Camden, they're going to file an
4 amended complaint. And if not, we'll find out what's going
5 on. Okay?

6 MR. RUBENSTEIN: Thank you, Your Honor. Yep.

7 THE COURT: But I -- I agree with you that they're
8 two issues. One is an administrative issue and the other is a
9 substantive issue, making sure that due diligence is done to
10 name the right parties.

11 Okay. Next issue is the plaintiff's fact sheet.
12 You know, on the issue of whether medical monitoring fact
13 sheets should be filed, I think the answer is no, unless
14 they're a named class plaintiff. I don't think there's any
15 dispute about that. And as to the issue of the objection,
16 clearly the objection is overruled. And the reason we spent
17 so much time working on the fact sheet is because we resolved
18 all objections, they're Court ordered, and they have to be
19 answered.

20 So to the extent that someone asserts an objection,
21 I would suggest the defendants notify them the objection is
22 overruled. I'll put that in an order when I get back on
23 Monday. And if they don't supplement their response, they'll
24 go on the order to show cause list. Okay?

25 MR. GOLDBERG: Understood.

1 THE COURT: Next issue is the direct filing order.
2 I have to tell you, I thought it would be easy, but I learned
3 my lesson. We'll let the parties work it out amongst
4 themselves.

5 Plaintiff, email my office your proposed version of
6 the order, okay?

7 MR. SLATER: Yes.

8 THE COURT: Do it today or tomorrow. Anyone who
9 objects, file your objections by next Friday, I'll enter the
10 order. Your objection --

11 UNIDENTIFIED COUNSEL: Your Honor --

12 THE COURT: -- will get entered. Let me just tell
13 you, counsel, what I envision is, I get the whereas clauses,
14 they would just add the two sartans to the last order, as an
15 accommodation to your group, we would sue (inaudible)
16 defendant and say you're not waiving any objections. It
17 couldn't be more simple. I don't know why this is so
18 complicated.

19 MR. JANOW: I understand -- Your Honor, this is --
20 this is John Janow for -- for Albertson and on behalf of the
21 various objecting defendants. Let me take a moment just to
22 assuage the Court's concerns here.

23 We -- you know, we have engaged with the plaintiffs
24 over the course of the last week in good faith to try to come
25 to an agreement and we've exchanged drafts back and forth

1 between the parties. I actually think we're very close, and
2 the parties are going back and forth and we were only just
3 sent today the -- the plaintiff's red line which we're
4 reviewing and we, you know, are intending to again continue to
5 meet and confer and try to resolve this so we can have an
6 agreed order submitted to the Court.

7 I would suggest respectfully and request that we be
8 permitted to finish that, you know, this week, in -- in
9 accordance with the February 14th deadline that Your Honor
10 ordered in the January 30th order. We've been working in good
11 faith toward that deadline and trying to do precisely what you
12 suggested, which is come to an agreed, simplified order to get
13 this -- to get this effectuated, understanding the various
14 objecting parties' objections and the Court's desire to
15 implement direct filing over those objections.

16 THE COURT: Counsel, this is the Court order. The
17 Court order is, if you don't agree on a final order by
18 tomorrow, plaintiff, email your version of the order;
19 defendant, serve your objections no more than a week. I'll
20 enter the final order. This -- it's just -- this should have
21 been so simple. I don't know why it's so complicated. You
22 just had to add two words to the last order, as far as I'm
23 concerned.

24 Next issue, the master economic complaint.
25 Plaintiffs want to add defendants. Plaintiff, file a motion.

1 The local rules provide that when you file a motion to amend,
2 you have to attach the proposed amended pleadings and you have
3 to indicate if there's any objection from the other parties.

4 I don't need a long brief on it; one paragraph. I
5 know what the law is. And hopefully when the parties see the
6 proposed amended complaint, they'll have no objection. But if
7 there is, we'll deal with it. Okay?

8 MR. SLATER: Yes, Your Honor.

9 THE COURT: Let me just see if there's any other
10 issue. We talked about the Aurobindo issue and the third-
11 party consultants with authority. I can always enter an
12 order, but I thought the parties were going to work this out.

13 MR. GOLDBERG: Again, Your Honor, I think the
14 parties are going to meet and confer on that. I think there
15 was a -- I think plaintiff's request was just that it had --
16 that had not put into an order.

17 MR. SLATER: Our -- I think our issue -- this is
18 Adam Slater. I'm not really sure what there is to meet and
19 confer on after this. We discussed it at the last conference.
20 Our understanding is, we thought it was going to be ordered,
21 but in either the case the defense was going to just disclose
22 who the third-party consultant's intermediaries are so we'll
23 know who to look for in the documents and be able to evaluate
24 the core discovery and make decisions on discovery. We're not
25 sure what there is to meet and confer on it, because if

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19

1 they're communicating with the FDA on behalf of the
2 defendants, there's no basis to not tell us who they are.

3 THE COURT: If the issue is not worked out by the
4 end of the month, I'll issue the order, Mr. Slater. Okay?

5 MR. SLATER: Thank you, Your Honor.

6 THE COURT: The last issue I want to address, and
7 then we'll open the floor to any issue the parties want to
8 address.

9 I spoke to Judge Kugler. He and I are both
10 concerned about what effect the situation in China has on the
11 progress of the case. Obviously, it puts Mr. Slater's client
12 -- not Mr. Slater, Mr. Goldberg's client in an extremely
13 difficult position. We understand and we have to deal with
14 it. We don't know if that is going to affect plaintiff's
15 strategy. We don't know how that's going to affect the
16 general progress of the case.

17 So this is what I'd like to do. Judge Kugler is not
18 going to be present, he's going to be out of town for the
19 meeting at the end of the month. So what I'd like to do is
20 this, and I'm going to coordinate with Mr. Slater and I'm
21 going to coordinate with Mr. Goldberg, I want to meet with
22 counsel informally in the morning at the end of the month and
23 talk about general strategy in the case, where we're going,
24 how we can efficiently manage this case, and focus on the
25 genuine issues in dispute, and then we'll have a general

1 status meeting on the record at 2:00.

2 I think we can get a lot done if we sit in a room
3 off the record and just talk informally to try and move this
4 case forward. I'll coordinate with Mr. Slater and Mr.
5 Goldberg about their suggestions about who should be present,
6 but that's what we'll do at the end of the month. We'll --
7 we'll have a general status meeting in the afternoon, and
8 we'll meet informally in the morning at 9:30 or 10. Hopefully
9 we can get a lot accomplished, and then go on the record for
10 whatever we need to go on the record for.

11 But just inform your groups, those people who aren't
12 in the -- who aren't in the leadership positions, that if they
13 want to come to the general status meeting, it's going to
14 start at 2:00. And I'll be back -- I'm back in the office --
15 well, we're closed on Monday, but I'll be back in town on
16 Monday, so you'll get emails from me and hopefully we can have
17 some suggestions about how we can be most productive.

18 MR. SLATER: That sounds great, Judge, thank you.

19 THE COURT: Okay. That's all the issues I wanted to
20 discuss. Let me give you the floor, plaintiff, do you have
21 any issues you want to address?

22 MR. SLATER: I don't believe so, unless someone else
23 has an issue I don't know of, Judge.

24 MR. GOLDBERG: No issues for defendant, Your Honor.

25 THE COURT: Okay. We're closed on Monday, so

Colloquy

21

1 hopefully I can get this order entered on Tuesday or
2 Wednesday. And, Mr. Goldberg, Mr. Slater, you'll hear from me
3 by email before then.

4 Thank you very much everybody. We're adjourned.

5 MR. SLATER: Thank you.

6 MR. GOLDBERG: Thank you, Judge.

7 ALL: Thank you, Your Honor.

8 (Proceedings concluded)

9 * * * * *

10
11 C E R T I F I C A T I O N

12 I, Roxanne Galanti, court approved transcriber,
13 certify that the foregoing is a correct transcript from the
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